

**COMMONWEALTH OF VIRGINIA
WASTE MANAGEMENT BOARD
CONSENT ORDER
ISSUED TO
VIRGINIA TRUCK CENTER, INC.**

Section A: Purpose

This is a consent order issued under the authority of §§ 10.1-1455, 10.1-1309, and 10.1-1316 of the Code of Virginia (1950), as amended, by the Boards to Virginia Truck Center, Inc. to resolve certain alleged violations of environmental laws and/or regulations at the Virginia Truck Center site.

Section B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Code” means the Code of Virginia (1950), as amended.
2. “Boards” means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184, and the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “VTC” means Virginia Truck Center, Inc., a Virginia Corporation, which operates at 267 Lee Highway, in Botetourt County, Virginia.
6. “Order” means this document, also known as a consent order.

7. “Regulations” means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.* (“SWMR”), and Existing Stationary Sources, 9 VAC 5-40-10 *et seq.*
8. “The Facility” means the open earthen pit where solid waste was burned at the Virginia Truck Center, Inc. site at 267 Lee Highway in Botetourt County, Virginia on May 1, 2006.

Section C: Findings of Fact and Conclusions of Law

1. On the morning of May 1, 2006, a DEQ inspector observed a smoke plume in Botetourt County and followed it to its source at the VTC site, where VTC personnel were burning solid waste in an open earthen pit. The DEQ inspector observed the following materials being burned in the pit: stumps, logs and brush, railroad ties, upholstery, a home heating oil tank, tire rims, carpeting, treated wood paneling or clapboard, metal containers, and various other plastics and metal objects.
2. In an e-mail on May 1, 2006, DEQ staff requested that VTC collect and properly dispose of residue from the fire and submit a soil sampling plan for review and comment.
3. In an Initial Site Evaluation completed pursuant to 9 VAC 20-80-205 by DEQ staff on May 1, 2006, the quantity of waste burned at the Facility was estimated at less than 1,000 cubic yards.
4. In a Notice of Violation dated May 5, 2006 regarding the open burning performed by VTC on May 1, 2006, DEQ cited the following statutes and regulations:

Virginia Code § 10.1-1408.1.A. No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of non-hazardous solid waste without a permit from the Director.

9 VAC 20-80-80. Open Dumps. A. Prohibition. 1. No person shall own, operate, or allow to be operated on his property any sanitary landfill or other facility for the disposal, treatment or storage of solid waste in a manner that constitutes open dumping as provided for in Part IV (9 VAC 5-80-170 *et seq.*) 2. No person shall dispose of solid waste in open dumps as defined in Part IV of this chapter. B. Any person who violates subsection A of this section shall immediately cease accepting additional wastes and shall initiate such removal, cleanup, closure in place, or alternative remedial actions as are required by Part IV of this chapter to alleviate the conditions that cause the facility to be classified as an open dump or to take other appropriate measures to abate improper management of waste.

9 VAC 20-80-90. Unpermitted facilities. A. Prohibitions and duties. 1. No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of solid waste without a permit from the director. 2. No person shall allow waste to be disposed of or otherwise

managed on his property without a permit from the director. 3. It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner.

9 VAC 20-80-180 B.7. The site or practice that engages in open burning of residential, commercial, institutional or industrial solid waste shall be classified as an open dump.

9 VAC 20-80-190 B. The owner or operator of an active open dump shall immediately cease treatment, storage or disposal of any additional waste.

9 VAC 20-80-190 C. The owner or operator or both or other responsible party shall initiate removal, cleanup, or alternate remedial action in accordance with 9 VAC 20-80-210.

9 VAC 5-40-5620.B. No owner or other person shall cause or permit open burning for the disposal of impregnated wood, or other rubber or petroleum based materials.

9 VAC 5-40-5620.D. No owner or other person shall cause or permit open burning for the purpose of a salvage operation or the disposal of commercial/industrial waste.

9 VAC 5-40-5620.F. No owner or other person shall dispose of waste by open burning.

5. In a follow-up site visit on May 5, 2006, DEQ staff observed that all burn residue had been removed from the pit and placed into a medium dump truck and a large roll-off container on a trailer. Both containers were covered with tarps. VTC representatives explained during that visit that they had contacted an environmental consultant to start the process of preparing a soil sampling and analysis plan.
6. On May 14, 2006, a consultant for VTC submitted a sampling and analysis plan ("Plan") for the Facility. DEQ approved the Plan on May 15, 2006.
7. Results of the sampling and analysis indicated that there was no evidence of disposal of hazardous waste at the burn site.
8. A total of 60.82 tons of soil and residue from the May 1, 2006 fire was properly disposed of at the Botetourt County landfill on May 25 and 26, 2006.
9. Neither the Director of the Department, his predecessor-in-interest, nor the Board has ever issued a permit under Code ?10.1-1408.1 for operation of the Facility.
10. Disposal of solid waste without a permit is prohibited at Va. Code § 10.1-1408.1.A, 9 VAC 20-80-90.A, and 9 VAC 20-80-480.A.

11. Disposal of solid waste by open burning is defined at 9 VAC 20-80-180.B.7 as operation of an open dump.
12. Disposal of solid waste in open dumps is prohibited at Va. Code § 10.1-1408.1.G and 9 VAC 20-80-80.A.2. Operation of open dumps is prohibited at Va. Code § 10.1-1408.1.H and 9 VAC 20-80-80.A.1.
13. Based on correspondence, file reviews, and inspections, the Director alleges that VTC violated Virginia Code § 10.1-1408.1, 9 VAC 20-80-80, 9 VAC 20-80-90, 9 VAC 5-40-5620.B, 9 VAC 5-40-5620.D, and 9 VAC 5-40-5620.F by open burning solid waste at the VTC site on May 1, 2006.
14. Based on the information collected in the ISE and the administrative record, the Director concurs with the proposed remedy for VTC or its contractors to remove and properly dispose the solid waste remaining after the May 1, 2006 fire at the Facility pursuant to 9 VAC 20-80-205.B.3. Because removal and proper disposal of this waste has already been accomplished, no further remedial action is necessary at this time.

Section D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it pursuant to Va. Code § 10.1-1455, and upon consideration of Va. Code § 10.1-1186.2, orders VTC and VTC agrees, to perform the actions described below and in Appendix A of this Order. In addition, the Board orders VTC, and VTC voluntarily agrees, to pay a civil charge of \$5,600.00 in settlement of the violations cited in this Order.

1. VTC shall pay \$1,400.00 of the civil charge within 30 days of the effective date of this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, VA 23218

The payment shall include VTC's Federal Identification Number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

2. VTC shall satisfy \$4,200.00 of the civil charge upon completing the Supplemental Environmental Project ("SEP") described in Appendix A of this Order.
3. The net cost of the SEP to VTC shall not be less than the amount set forth in Paragraph D.2. If it

is, VTC shall pay the remaining amount in accordance with Paragraph D.1 of this Order, unless otherwise agreed to by the Department. "Net costs" means the costs of the project minus any tax savings, grants and first-year operation cost reductions or other efficiencies.

4. By signing this Order, VTC certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.
5. In the event that it publicizes the SEP or the SEP results, VTC shall state in a prominent manner that the project is a part of a settlement for an enforcement action.
6. The Department has sole discretion to:
 - a. Authorize any alternate SEP proposed by VTC; and
 - b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
7. Should the Department determine that VTC has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify VTC in writing. Within 30 days of being notified, VTC shall pay the amount specified in Paragraph 2 as provided in Paragraph 1 above.
8. VTC acknowledges that it is solely responsible for completion of the SEP. Any transfer of funds, tasks, or otherwise by VTC to a third party shall not relieve VTC of its responsibility to complete the SEP as contained in this Order.

Section E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of VTC, for good cause shown by VTC, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those alleged violations pertaining to the facility specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts. This Order shall not limit the authority of the Board or the Director to seek remediation and/or civil penalties or civil charges pertaining to any other violations that may have occurred at the landfill.
3. For purposes of this Order and subsequent actions with respect to this Order, VTC admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. VTC declares that it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, the Virginia Waste Management Act, Code §§ 10.1-1400 *et seq.*, and Air Pollution Control Law, Code §§ 10.1-1300 *et seq.*, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding, or to judicial review of, any action taken by the Board or the Director to enforce this Order.
5. Failure by VTC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. VTC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, or other act of God, war, strike, or other such occurrences. VTC must show that the circumstances resulting in the noncompliance were beyond its control and were not due to a lack of good faith or diligence on its part. VTC shall notify the Director and the Director of the Department's West Central Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Director of the Department's West Central Regional Office within 24 hours of the commencement of the condition causing or anticipated to cause the delay or noncompliance shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.

9. This Order shall become effective upon execution by both the Director of the Department of Environmental Quality or his designee and VTC. Notwithstanding the foregoing, VTC agrees to be bound by any compliance date that precedes the effective date of this Order.
10. Any plans, reports, schedules or specifications attached hereto or submitted by VTC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall continue in effect until VTC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve VTC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. The undersigned representative of VTC by his or her signature certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind VTC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of VTC.
13. By the signature of an authorized official below, VTC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2006.

Steven A. Dietrich, Regional Director
West Central Regional Office
Department of Environmental Quality

Seen and Agreed to: _____

The foregoing instrument was acknowledged before me on _____

by _____, _____, on behalf of VTC,

Consent Order
Virginia Truck Center, Inc.
Page 8 of 10

(name)

(title)

in the County/Town of _____, Commonwealth of Virginia.

Notary Public

My Commission expires: _____

APPENDIX A
SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. The SEP to be performed by VTC is to purchase and operate a used-oil-fired space heater to be used to heat a building at VTC. The heater must be operated in accordance with the requirements of 40 CFR 279.23 (On-site burning in space heaters)¹, 40 CFR 279.11 (Used oil specifications)², and any applicable requirements of the Regulations (including any applicable air permitting and operating requirements). VTC must demonstrate exemption from management of the used oil as a hazardous waste in accordance with 40 CFR 279.11 by submitting analytical results to WCRO before VTC may operate the heater.
2. The SEP shall be completed within 90 days of the effective date of this Order.
3. VTC shall provide the Department with written verification of completion of the SEP by providing a written report to DEQ within 10 days of completion of the SEP.
4. VTC shall submit written verification of SEP costs to the Department in the form of invoices or other proof of payment of the final overall and net cost of the SEP within 30 days of completion of the SEP. For the purposes of this submittal, net costs can be either the actual final net costs or the projected net costs if such projected net costs statement is accompanied by a CPA certification or certification from VTC's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

¹ The following is the text of 40 CFR 279.23: "Generators may burn used oil in used oil-fired space heaters provided that: (a) The heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourself used oil generators; (b) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour; and (c) The combustion gases from the heater are vented to the ambient air."

² The following is the text of 40 CFR 279.11: "Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under this part unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any specification and the person making that showing complies with §§ 279.72, 279.73, and 279.74(b), the used oil is no longer subject to this part." Table 1 at 40 CFR 279.11 is captioned "USED OIL NOT EXCEEDING ANY SPECIFICATION LEVEL IS NOT SUBJECT TO THIS PART WHEN BURNED FOR ENERGY RECOVERY". This caption is marked with Footnote No. 1. Table 1 lists the following allowable levels for the following constituents: "Arsenic 5 ppm maximum; Cadmium 2 ppm maximum; Chromium 10 ppm maximum; Lead 100 ppm maximum; Flash point 100 °F minimum; Total halogens 4,000 ppm maximum." The allowable level for total halogens is marked with Footnote 2. In addition to the two footnotes, a "NOTE" also appears at 40 CFR 279.11. The NOTE reads as follows: "Applicable standards for the burning of used oil containing PCBs are imposed by 40 CFR 761.10(b)). Footnote 1 reads as follows: "The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see § 279.10(b))." Footnote 2 reads as follows: "Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under § 279.10(b)(1). Such used oil is subject to subpart H of part 266 of this chapter rather than this part when burned for energy recovery unless the presumption of mixing can be successfully rebutted."

5. Documents to be submitted to the Department regarding the SEP shall be sent to: Robert Steele, Va. Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019.